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No. 90-890

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

LOUIS SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES,

Petitioner,

—v.—

PLANNED PARENTHOOD FEDERATION OF AMERICA, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENTS

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PARTIES TO THE PROCEEDING

None of the corporate respondents has a parent or subsidiary corporation.

STATEMENT

Respondents agree with petitioner that the petition for a writ of certiorari in this case should be held and disposed of in light of this Court's resolution of *Rust v. Sullivan*, cert. granted, Nos. 89-1391 and 89-1392 (May 29, 1990) (argued October 30, 1990).

After the resolution of *Rust*, however, there may remain issues in this case to be addressed. These issues could include the impact on the respondents' and their patients' rights of the conclusion reached by the Tenth Circuit that "government funding, which fuels virtually all 'birth control' clinics in the nation, lures poverty-level women to [Title X] clinics for pregnancy testing, medical advice, and referrals to other health care providers . . . [and that] many of the poorest, most naive and ignorant women—who are the persons targeted by Title X—will rely on [incomplete] information." *Planned Parenthood Federation of America, et al. v. Sullivan*, App. 15a.[1] Another possible issue, also addressed by the Tenth Circuit, is the manner in which section 59.9 (the "separation" requirements) will run afoul of 42 U.S.C 300a-7 (the general nondiscrimination policy applicable to all grants under the Public Health Service Act), particularly in the situations of doctors who are solo practitioners in small rural communities. App 9a-10a. A third possible issue would be the impact of the regulations on the constitutional rights of one of the respondents in this case who operates a library, and on the constitutional rights of that respondent's clients who rely on the library for information.

To allow for the possibility that these, or additional, issues will remain to be addressed in this case, respondents request

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1 "App." refers to the appendix to the petition for a writ of certiorari.

an opportunity after the disposition of *Rust*, pursuant to Rule 15.7, to submit a supplemental brief in response to the petition for certiorari; or in the alternative, request that any disposition of the petition for certiorari, other than its denial, allow respondents to raise these issues, or additional issues, in the subsequent judicial proceedings.

CONCLUSION

The petition for a writ of certiorari should be held and disposed of in light of this Court's resolution of *Rust v. Sullivan*. After the resolution of *Rust*, respondents should be allowed to file a supplemental response to the petition, unless the petition is denied, or respondents will have an opportunity to raise possible remaining issues in subsequent judicial proceedings.

Dated: February 6, 1991

Respectfully submitted:

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